

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

GALE A. NORTON, Secretary of the Interior,
et al.,

Defendants.

Case No. 1:96CV01285
(Judge Lamberth)

DEFENDANTS' OPPOSITION TO (1) PLAINTIFFS' MOTION
TO STRIKE DEFENDANTS' OPPOSITION TO EDITH BLACKWELL
CONTEMPT SPECIFICATIONS AND (2) PLAINTIFFS' MOTION FOR
ENLARGEMENT OF TIME TO REPLY TO SUCH OPPOSITION

Plaintiffs move to strike the Government's Response to Plaintiffs' Bill of Particulars and Supplemental Memorandum in Support of Plaintiffs' Motion for an Order to Show Cause Why Edith Blackwell Should Not Be Held in Contempt in Connection with the Overwriting of Backup Tapes (filed Aug. 12, 2002) (the "Blackwell Opposition").¹ Plaintiffs' motions to strike and for enlargement are based upon the false assertion that plaintiffs were not effectively served with the Blackwell Opposition. Plaintiffs' motion is not merely petty, it is entirely frivolous for the following reasons: (1) plaintiffs do not contest the validity of the service made by hand upon Keith Harper or by mail upon Elliott Levitas, and (2) plaintiffs filed the current motion despite the government's agreement to plaintiffs' proposal that they be permitted to file their reply to the Blackwell Opposition on or before August 22, 2002. Accordingly, the Court should deny the motion to strike, grant the motion for enlargement only to August 22, 2002, and consider sanctioning the plaintiffs under Fed. R. Civ. P. 11(c) for filing an unnecessary and legally unsubstantiated motion.

¹Plaintiffs' "bill of particulars"/"supplemental memorandum" sought civil and criminal contempt findings against Department of Interior employee Edith Blackwell. See Bill of Particulars for Edith Blackwell in Support of Plaintiffs' Motion for Order to Show Cause Why Interior Defendants and Their Counsel Should Not Be Held in Civil and Criminal Contempt for Destroying E-Mail (3/20/02) and Supplemental Memorandum of Points and Authorities in Support of Criminal Contempt (filed July 29, 2002).

Factual Background

Plaintiffs' chief complaint is that Kevin Kingston, an employee of the government's litigation management contractor for this civil action, served the Blackwell Opposition upon one of plaintiffs' counsel – Mr. Dennis Gingold – on the 10th floor of Mr. Gingold's office building, rather than the 9th. Disingenuously, plaintiffs assert that there has been a lengthy course of service problems when the government has delivered papers to the 10th floor receptionist at Mr. Gingold's building.² Quite to the contrary, the government has on numerous occasions since at least late 2001 served papers on Mr. Gingold by delivering them to the 10th floor receptionist in accordance with a sign posted on the 9th floor directing all deliveries to be made to the 10th floor when the 9th floor is locked. *See* Govt. Ex. 1 (Kingston Dec.) ¶¶ 3; Govt. Ex. 2 (Peterson Dec.) ¶ 2; Govt. Ex. 3 (DeLeeuw Dec.) ¶ 3. Until very recently, these deliveries were accepted without incident. Govt. Ex. 1 ¶¶ 3-5; Govt. Ex. 2 ¶ 2; Govt. Ex. 3 ¶ 4; Govt. Ex. 4 (Pritchard Dec.) ¶ 3. Consistent with this long-established practice and the posted direction on the 9th floor, Mr. Kingston hand-delivered the Blackwell Opposition shortly after 6:00 pm on August 12, 2002 to the 10th floor receptionist after he was unable to access the 9th floor. Govt. Ex. 1 ¶ 7, 8. The doors on the 10th floor were still open, and the receptionist was present. After a brief exchange, Mr. Kingston placed the package on the receptionist's counter and left. *Id.*³

In addition to delivering the papers by hand to Mr. Gingold's office, as described above, Mr. Kingston also hand-delivered a copy of the Blackwell Opposition to plaintiffs' counsel Keith

²Plaintiffs assert that the so-called service "problem" at Mr. Gingold's office has been going on for "the last several months." (1) Plaintiffs' Motion to Strike Defendants' Opposition to Edith Blackwell Contempt Specifications and (2) Motion for Enlargement of Time to Reply to Such Opposition ("Plaintiffs' Motion") at 3. However, they document only three instances of any dispute involving the government's delivery of materials to the 10th floor receptionist, all of which occurred – at most – within 3 weeks of the filing of their current motion. *See* Plaintiffs' Ex. 1 ¶¶ 9, 10, 14; *compare* Govt. Ex. 1 ¶¶ 3-5; Govt. Ex. 2 ¶ 2; Govt. Ex. 3 ¶¶ 3 and 4; Govt. Ex. 4 ¶¶ 3 and 4.

³In these circumstances, there certainly is no basis for plaintiffs' charge of "perjury" concerning the certificate of service.

Harper by putting the package through the mail slot on Mr. Harper's office door. Govt. Ex. 1 ¶ 9. Finally, Mr. Kingston served plaintiffs' counsel Elliot Levitas by mail. *Id.* ¶ 10. Each of these methods of service complied with Fed. R. Civ. P. 5, and each independently satisfied the requirement of Rule 5(a) that every pleading "be served upon each of the parties."

Argument

Plaintiffs' correctly note that Fed. R. Civ. P. 5(b) provides multiple means of effecting service upon a party represented by an attorney. *See* Plaintiff's Motion at 5 (quoting 2001 amendments to Rule 5(b)). Rule 5(b)(2)(A)(ii) states that service may be made by delivering a copy of the pleading "at the person's office with a clerk or other person in charge, or if no one is in charge, leaving it in a conspicuous place in the office. . . ." The sign on the 9th floor of Mr. Gingold's office building directing deliveries to the 10th floor receptionist, reinforced by the many months of established, unchallenged practice by the government in delivering papers to Mr. Gingold in this manner, made the 10th floor receptionist a "person in charge" for purposes of Rule 5(b). At a minimum, given the posted direction on the 9th floor, leaving the Blackwell Opposition with the 10th floor receptionist constituted "leaving it in a conspicuous place in the office," and thus complied with Rule 5(b). There is no question that Mr. Gingold in fact received his copy of the Blackwell Opposition sometime before plaintiffs' counsel first contacted government counsel about this matter on August 14, 2002. *See* Plaintiffs' Ex. 2.⁴ Thus, the service upon Mr. Gingold's office complied with Rule 5(b).

Even if the service upon Mr. Gingold's office had been defective, however, there is no contest that the government properly served plaintiffs' two other attorneys – Keith Harper and

⁴Tellingly, plaintiffs do not state the date and time their counsel actually had the Blackwell Opposition in hand. From this, the Court should presume that they received it on August 12, 2002, when it was served at Mr. Gingold's office.

Elliott Levitas.⁵ Because at least one of plaintiffs' counsel was indisputably served in accordance with Rule 5(b), plaintiffs' motion is entirely without legal foundation. Rule 5(a) clearly and unambiguously provides that all **parties** must be served with pleadings, not all **attorneys**. Moreover, a cursory review of the case law, or even a quick glance at *Wright & Miller*, would have revealed to plaintiffs the complete lack of legal foundation for their motion to strike: the courts that have considered the question have uniformly ruled that when a party is represented by more than one attorney, proper service upon **any** of the party's attorneys, under any of the means set forth in Rule 5(b), constitutes proper service upon the party. *E.g.*, *Daniel Int'l Corp. v. Fishbach & Moore, Inc.*, 916 F.2d 1061, 1063 (5th Cir. 1990); *Buchanan v. Sherrill*, 51 F.3d 227, 228 (10th Cir. 1995) (*per curiam*); *Travers v. Computing Analysis Corp.*, 178 F.3d 1286 (unpublished table decision), 1999 WL 285859, at ** 2 (4th Cir. 1999); *Allen v. Pacific Bell*, 2002 WL 1628989, at *9 n.2 (C.D. Cal. July 22, 2002); *United States v. Schooner Windspirit*, 161 F.R.D. 321, 323 (D.V.I. 1995); *see also* 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure Civ. 3d* § 1145 (“When a party is represented by more than one attorney, service upon any one of them satisfies the requirement of Rule 5.”), citing *Buchanan v. Sherrill*, *supra*, and *U.S. v. Schooner Windspirit*, *supra*. Thus, the service upon either Mr. Harper or Mr. Levitas – to say nothing of both – unquestionably and unambiguously discharged the government's service obligations under Rule 5.

Plaintiffs' pettiness and inexcusable waste of the Court's time with this frivolous motion is demonstrated by their own Exhibit 3 – Mr. Wells' letter of August 15, 2002. In that letter, the government **agreed** to plaintiffs' counsel's proposal to resolve the service dispute as to the Blackwell Opposition by stipulating that plaintiffs could, in this instance, have the extra three

⁵ In their August 15, 2002 letter to Department of Justice attorney Dodge Wells (Plaintiffs' Ex. 4), plaintiffs' counsel contended that the use of Mr. Harper's mail slot did not meet the requirements of service under Rule 5(b). However, plaintiffs have not made that assertion in the motion itself and therefore have waived any contest to that service. In any event, the uncontested service by mail on Mr. Levitas fully discharged the government's service obligations under Rule 5.

days to file their reply provided by Rule 6(e) for pleadings served by mail. This agreement effectively enlarged the time for plaintiffs' reply to August 22, 2002 – precisely what plaintiffs had sought in their “meet and confer” with Mr. Wells (*see* Plaintiffs' Ex. 2), and certainly the most they were entitled to based upon the unchallenged service by mail upon Mr. Levitas. Yet plaintiffs filed this frivolous motion anyway, after Mr. Wells had agreed to the proposed enlargement to August 22. The government stands by that agreement, and will not contest the timeliness of a reply filed and served on or before August 22, 2002. Plaintiffs, however, have not offered any explanation as to why they filed this motion after the government had already agreed to **their** proposed enlargement.

It may be that plaintiffs are attempting to use the current service dispute as leverage to force the government to agree that hand-delivered pleadings, as well as faxed and mailed pleadings, will be treated as if they had been mailed for purposes of calculating response times under Rule 6(e). *See* Plaintiffs' Motion at 3 n.4 (criticizing "defendants' recent penchant for personal service of motions and other court documents" as being "solely for purposes of tactical advantage."); *see also* Plaintiffs' Ex. 2 and 4 (letters from plaintiffs' counsel to Mr. Wells). While plaintiffs accuse the government of “gamesmanship” in serving pleadings by hand delivery, there is no question that all parties are entitled to effect service in any manner allowed by Rule 5(b), including hand delivery. Further, the government’s service by hand assures that plaintiffs’ counsel have prompt notice of the government’s pleadings. There clearly is no attempt to disadvantage plaintiffs by serving papers exclusively through “snail mail.” The government's declination to enter into plaintiffs' proposed modification of the timing rules as to **future** pleadings does not justify their filing of this legally baseless motion, especially after the government had agreed to the enlargement plaintiffs asked for as to the Blackwell Opposition. Plaintiffs essentially treated the "meet and confer" with Mr. Wells as a merely technical requirement with no obligation on their part to engage in a good faith effort to resolve the dispute over the due date of the Blackwell Opposition. The Court should not condone such conduct.

Plaintiffs may have concocted this tempest in a teapot in an effort to obtain an enlargement of time beyond August 22, 2002 to file their reply to the Blackwell Opposition. However, plaintiffs' motion offers no justification for any enlargement beyond August 22, 2002. Plaintiffs have had months and months to compile their "supplemental memorandum" regarding Ms. Blackwell and should be fully prepared to respond to the government's arguments, particularly since plaintiffs' "supplemental memorandum" is substantially a rehash of their March 20, 2002 show cause motion, to which the government responded more than four months ago. Because plaintiffs themselves have decided – for whatever tactical reason of their own – to adopt a uniform policy of opposing the government's requests for enlargements of time, the government does not believe it is fair to the defendants to permit plaintiffs additional time for their filings. Accordingly, the government opposes any enlargement beyond the agreed-upon date of August 22, 2002, for plaintiffs to file their reply to the Blackwell Opposition.

Conclusion

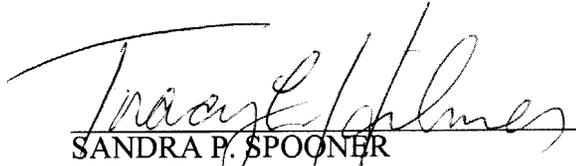
For the foregoing reasons plaintiffs' motion to strike the Blackwell Opposition should be denied. Because plaintiffs have failed to provide any justification, their Motion for Enlargement of time to file their reply to the Blackwell Opposition should be limited to August 22, 2002 – the date originally proposed by plaintiffs' counsel and agreed to by the government – and the Court should decline to consider a reply filed by the plaintiffs after that date. Additionally, the Court should consider sanctioning the plaintiffs for filing this unnecessary and frivolous motion by awarding the government its fees and costs incurred in filing this response. A proposed order is attached.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
MICHAEL F. HERTZ
Directors

A handwritten signature in black ink, appearing to read "Sandra P. Spooner", written over a horizontal line.

SANDRA P. SPOONER
Deputy Director
D.C. Bar No. 261495
Dodge Wells
Senior Trial Counsel
D.C. Bar No. 425194
Tracy L. Hilmer
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P.O. Box 261
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(202) 307-0474

DATED: August 21, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ELOUISE PEPION COBELL, et al.,)	
)	
Plaintiffs,)	Civil Action No. 96-CV-1285 (RCL)
)	
v.)	
)	
GALE A. NORTON, et al.,)	
)	
Defendants.)	
_____)	

ORDER

Upon consideration of Plaintiffs' Motion to Strike Defendants' Opposition to Edith Blackwell Contempt Specifications and Motion for Enlargement of Time to Reply to Such Opposition, the Government's Opposition thereto, and the entire record in this case, it is this _____ day of _____, 2002, hereby

ORDERED that Plaintiffs' Motion to Strike be, and hereby is, DENIED; and it is

FURTHER ORDERED that Plaintiffs' Motion for Enlargement of Time is GRANTED IN PART, and plaintiffs shall have to and including August 22, 2002 to file their reply to the Government's Response to Plaintiffs' Bill of Particulars and Supplemental Memorandum in Support of Plaintiffs' Motion for an Order to Show Cause Why Edith Blackwell Should Not Be Held in Contempt in Connection with the Overwriting of Backup Tapes. Plaintiffs' Motion for an Enlargement of Time beyond August 22, 2002 in which to file such reply is DENIED.

Honorable Royce C. Lamberth
United States District Judge

cc:

Tracy Hilmer
Dodge Wells
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Washington, D.C. 20044-0875
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Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W., Ninth Floor
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Fax (202) 318-2372

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
Fax (202) 822-0068

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Amy Berman Jackson
Trout & Richards
1100 Connecticut Avenue, N.W.
Suite 730
Washington, D.C. 20036
Fax: (202)463-1925

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on August 21, 2002 I served the foregoing *Government's Opposition to (1) Plaintiffs' Motion to Strike Defendants' Opposition to Edith Blackwell Contempt Specifications and (2) Motion for Enlargement of Time to Reply to Such Opposition*, with proposed Order, by first-class mail, postage prepaid, and by facsimile transmission, pursuant to agreement, upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
Fax No.: 202-822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
Fax No.: 202-318-2372

and by U.S. Mail only upon:

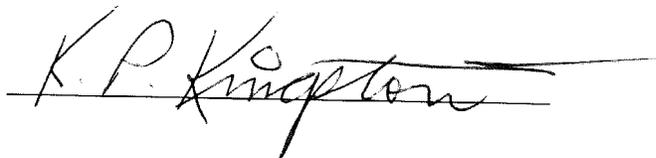
Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Courtesy copies provided to:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Joseph S. Kieffer, III
Court Monitor
420 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

Amy Berman Jackson
Trout & Richards
1100 Connecticut Avenue, N.W.
Suite 730
Washington, D.C. 20036

A handwritten signature in black ink, reading "K. P. Kingston", is written over a horizontal line.

problem with this service.

4. From late 2001 through July 2002, I continued to effect service via hand delivery on Mr. Gingold in accordance with the instructions on the sign next to Mr. Gingold's locked door on the ninth floor. On some occasions, when I arrived around 6:00 p.m. or later, the elevator would not stop on the 9th floor, and so I proceeded directly to the 10th floor. When I arrived at the 10th floor, the receptionist would sometimes call down to Mr. Gingold – who would then come up himself or send someone else to receive the delivery. Other times, the receptionist would simply accept the package without comment or would indicate that she would call Mr. Gingold to let him know the package was there for him. At no time through July 2002 did Mr. Gingold, the receptionist or anyone else indicate to me that there was a problem with this manner of service.

5. The first time there was any problem with my taking a delivery in this case to the 10th floor of Mr. Gingold's building was August 5, 2002. At approximately 5:30 p.m., I went to Mr. Gingold's office to serve a pleading. I was accompanied by another law clerk, Evan Pritchard. Because in our experience the 9th floor was always locked or inaccessible, and, pursuant to the directions on the 9th floor sign, we would then proceed to the 10th floor, we went directly to the 10th floor. On this occasion, the receptionist initially declined to accept the delivery, saying she could not accept anything for Mr. Gingold or sign a receipt for anything unless she first knew who it was from and their phone number. She pointed to an envelope on the counter behind her and said words to the effect of "You see this thing you delivered Friday? He told me I'm not to give it to him and I have not given it to him." I understood her to be speaking about Mr. Gingold. The receptionist indicated that tonight's delivery would be treated similarly unless I gave my name and number. So I gave her my name and she asked for my number. I told her that Mr. Gingold knew my number. I left the envelope with her and she said that she would let Mr.

Gingold know we were there.

6. On August 6, 2002, Geoffrey Rempel called the offices of one of the Labat law clerks looking for me. Mr. Rempel told me he wanted to work out an arrangement for service whereby we would call ahead to see if plaintiffs' counsel would accept a hand delivery. He told me that the receptionist on the 10th floor is not part of their office. He stated that he wanted to formalize the arrangement in a letter that day. Uncomfortable with discussing service issues with plaintiffs' representative, I told him I was unable to talk to him right then since I was in the middle of a project on a deadline. Remple stated that since I would not agree to the arrangement, he would send a letter informing us that the receptionist is not part of their office, and that delivery to her would not constitute effective service. I stated that it was not that I had not agreed, but that I did not have time to discuss it. Later that day, Mr. Gingold sent a letter addressed to Chris Kohn and Mark Nagle which discussed service issues. That letter is included in Exhibit 1 to *(1) Plaintiffs' Motion to Strike Defendants' Opposition to Edith Blackwell Contempt Specifications; and (2) Motion for Enlargement of Time to Reply to Such Opposition.*

7. In response to Mr. Gingold's letter and to the circumstances surrounding recent deliveries to Mr. Gingold, I was informed by my supervisors that DOJ counsel had directed that when service is to be effected on Mr. Gingold via hand delivery, we should clearly address the package to Dennis Gingold, attempt delivery on the 9th floor and if unsuccessful proceed to the 10th floor in accordance with the sign on the 9th floor, place the package on the receptionist's desk, and leave without comment.

8. On August 12, 2002, at approximately 6:10 p.m., I went with another clerk to Mr. Gingold's office to serve *The Government's Response to Plaintiffs' Bill of Particulars and Supplemental Memorandum in Support of Plaintiffs' Motion for an Order to Show Cause Why*

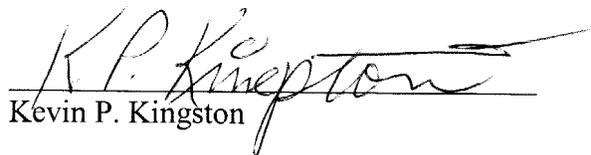
Edith Blackwell Should not be Held in Contempt in Connection with the Overwriting of Backup Tapes (the "*Blackwell Opposition*"). We attempted to go to the 9th floor, but the elevator would not allow that floor to be selected, so we went to the 10th floor. As we approached the receptionist she said she would not accept our package and we had to call first. In accordance with our instructions, without saying anything we placed the package on the counter and left.

9. I proceeded to Mr. Harper's office at 1712 N Street, N.W., Washington, D.C. 20036. I knocked on the door, but there was no answer. As I had done on at least one previous occasion when I had delivered papers to Mr. Harper's office and no one had responded to my knock on the door, I slid the envelope containing the *Blackwell Opposition* through the mail slot in Mr. Harper's office door. The envelope landed in plain sight on the vestibule floor. The door to Harper's office (Native American Rights Fund) is the only door inside the vestibule. When I had served papers to Mr. Harper's office in this manner before, there had been no indication of any problem with this manner of service.

10. In addition to delivering the *Blackwell Opposition* to Messrs. Gingold's and Harper's offices on August 12, 2002, I also mailed a copy of the *Blackwell Opposition* on that date by first-class, postage prepaid mail to Elliott Levitas, another of plaintiffs' attorneys.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2002.


Kevin P. Kingston

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)

Plaintiffs,)

v.)

GALE NORTON, Secretary of)
The Interior, et al.)

Defendants.)

Civil No. 96-1285
(RCL)

DECLARATION OF ANNAKA PETERSON

I, Annaka Peterson, declare that:

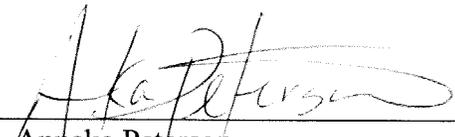
1. I have been employed by Labat-Anderson since November 27, 2001. I have been assigned to the Cobell Litigation Support project since July 19, 2002.
2. In the course of my employment with Labat, I have had occasion to make hand deliveries to the office of Dennis Gingold on three occasions. On the first two occasions, I was accompanied by Erin Langsdorf of Labat-Anderson. On both of these occasions we proceeded to the 9th floor of 1275 Pennsylvania Avenue, N.W. We attempted to enter Mr. Gingold's office, but it was locked. There was a sign on a table immediately to the left of the doors to the suit in which Mr. Gingold office maintains his office. The sign indicated that if there was no one available to accept deliveries in Mr. Gingold's office, that deliveries should be made to the receptionist on the 10th floor. The sign indicated that this applied to three different organizations, and Mr. Gingold was specifically listed as one of the three. On the first of these two occasions, we proceeded to 10 and left the

package with the receptionist. On the second occasion, the receptionist indicated that she needed to call Mr. Gingold to see if she could accept the delivery because she had gotten in trouble for accepting a delivery the night before. She made a telephone call and told us that it would be okay for her to accept the package. We left it with her and we left the building.

3. On the third occasion, August 9, 2002 at approximately 4:00 p.m. I proceeded to the 9th floor with a delivery. I knocked on the door and there was no answer. As I was looking at the sign on the table to the left of the door, a woman approached the glass doors to Mr. Gingold's office and was using a key to enter. I told her that I was there to make a delivery. She asked for whom. I told her that the package was for Mr. Gingold and she took the package from me and told me that she would deliver it to him.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2002.



Annaka Peterson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)

Plaintiffs,)

v.)

GALE NORTON, Secretary of)

The Interior, et al.)

Defendants.)

Civil No. 96-1285
(RCL)

DECLARATION OF NEIL DELEEuw

I, Neil DeLeeuw, declare that:

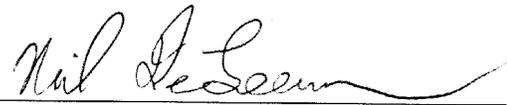
1. I have been employed by Labat-Anderson on the Cobell Litigation support project since March 21, 2002.
2. In the course of my employment with Labat, I have had occasion to make hand deliveries to the office of Dennis Gingold on approximately twelve occasions.
3. When I made deliveries to Mr. Gingold's office, it was my practice to go to the 9th floor. With the exception of my last visit on Friday, August 16, 2002, there was no one available to accept my delivery. I would, therefore, proceed to the 10th floor reception area to make my delivery on these occasions. This was in accordance with a small sign posted on a table immediately to the left of the two doors leading into the suite in which Mr. Gingold maintains his office. This sign indicated that for all night deliveries and when the door was locked, the delivery should be made to the 10th floor. The sign

indicated that this applied to the Law offices of Dennis Gingold and two other entities, the names of which I do not recall. This sign was present on each of my delivery attempts except for August 16, 2002. The last time I made a delivery to Mr. Gingold's office prior to August 16, 2002 was on August 8, 2002.

4. On August 8, 2002, I made a delivery to Dennis Gingold's office. I went to the 9th floor and it was locked. As I had done before, I proceeded to the 10th floor. I told the receptionist that I had a delivery for Dennis Gingold and she indicated that she could not accept it. She told me that she thought that Mr. Gingold wanted us to call ahead. I asked for Mr. Gingold's number and she said that I should come prepared. This is the same woman to whom I had made all of the previous deliveries without incident. I would tell her that I had a delivery for Mr. Gingold and she would say "okay" and accept it. On this occasion, she did call down to Mr. Gingold's office and said she had a delivery for him. She hung up and did not say anything else to me. I went back down to 9 and someone met me at the door and accepted the package.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2002.



Neil DeLeeuw

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)

Plaintiffs,)

v.)

GALE NORTON, Secretary of)
The Interior, et al.)

Defendants.)

Civil No. 96-1285
(RCL)

DECLARATION OF GORDON E. PRITCHARD

I, Gordon E. Pritchard, declare that:

1. I have been employed by Labat-Anderson since May 6, 2002. From that date through August 14, 2002, I was assigned to the Cobell Litigation Support team as a Law Clerk.
2. In the course of my employment with Labat, I have had occasion to make hand deliveries of service to the office of Dennis Gingold on two occasions.
3. On the first occasion, which was on or about August 1, 2002, I went to the 10th floor of Mr. Gingold's building. I had been told by co-workers that it was virtually impossible to make a delivery of service on the 9th floor and that a sign directed deliveries to be made to the 10th floor. I handed the package to the receptionist on the 10th floor and she said that she would see that Mr. Gingold got it. Since this was the first time I had made a delivery, I asked her about the possibility of delivering it directly to Mr. Gingold. She called Mr. Gingold who said that he was too busy to accept it

personally and that if I wanted to deliver it personally I would have to come back the next day. I left the 10th floor with the package and returned to the first floor lobby where a co-worker was waiting for me. We called our office for instructions and I was advised to leave it with the receptionist on 10. I went back to the 10th floor, left it with the receptionist and left the building.

4. On the evening of August 5, 2002 Kevin Kingston and I delivered to Dennis Gingold's office the Government's Response to Plaintiffs' Bill of Particulars and Supplemental Memorandum in Support of Plaintiffs' Motion for an Order to Show Cause Why Edward B. Cohen Should Not be Held in Criminal Contempt. We went to the 10th floor and we delivered this document to the receptionist there. She told us she had been instructed by Gingold not to accept anything unless the courier left his name and number. Kevin stated that the document was from the Department of Justice. She stated that she could not accept the document. Kevin stated that service had already occurred. She then gestured behind her to a document she stated was delivered by Kevin on Friday, suggesting that tonight's delivery would be ignored by Mr. Gingold as well. Kevin reiterated that service had already occurred. She again said she needed his name and number at which point Kevin gave her his name and stated that Mr. Gingold knew how to contact him. As we left, the envelope still in front of her, the receptionist stated that she would let Mr. Gingold know that Kevin had stopped by.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 20, 2002.



Gordon E. Pritchard